

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

<div>In re:</div> <div>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</div> <div>as representative of</div> <div>THE COMMONWEALTH OF PUERTO RICO, et al.,</div> <div>Debtors.¹</div>	<div>PROMESA Title III</div> <div>Case No. 17-BK-3283-LTS</div> <div>(Jointly Administered)</div>
<div>In re:</div> <div>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</div> <div>as representative of</div> <div>PUERTO RICO ELECTRIC POWER AUTHORITY,</div> <div>Debtor.</div>	<div>PROMESA Title III</div> <div>Case No. 17-BK-04780-LTS</div> <div>Court Filing Relates Only to PREPA and Shall Only be Filed In Case No. 17-BK-04780-LTS and Main Case 17-BK-3283-LTS</div>

**OBJECTION OF ARC AMERICAN, INC. TO URGENT MOTION OF THE
FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO FOR
ENTRY OF ORDER CLARIFYING SCOPE OF INTERIM HEARING ON URGENT
JOINT MOTION OF THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD
FOR PUERTO RICO AND THE PUERTO RICO FISCAL AGENCY AND FINANCIAL
ADVISORY AUTHORITY FOR ENTRY OF INTERIM AND FINAL ORDERS (A)
AUTHORIZING POSTPETITION SECURED FINANCING, (B) GRANTING PRIMING
LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS,**

¹ The Debtors in these title III cases, along with each Debtor's respective title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK- 3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566(LTS)) (Last Four Digits of Federal Tax ID: 9686), (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808), (iv) Puerto Rico Sales Tax Financing Corporation "COFINA") (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747).

**(C) MODIFYING THE AUTOMATIC STAY, (D) SCHEDULING A FINAL HEARING,
AND (E) GRANTING RELATED RELIEF**

TO THE HONORABLE LAURA TAYLOR SWAIN,
UNITED STATES DISTRICT JUDGE:

1. Arc American, Inc. (“**Arc**”), by and through its undersigned attorneys, respectfully submit this objection (the “**Scope Objection**”) to the *Urgent Motion Of The Financial Oversight And Management Board For Puerto Rico For Entry Of Order Clarifying Scope Of Interim Hearing On Urgent Joint Motion Of The Financial Oversight And Management Board For Puerto Rico And The Puerto Rico Fiscal Agency And Financial Advisory Authority For Entry Of Interim And Final Orders (A) Authorizing Postpetition Secured Financing, (B) Granting Priming Liens And Providing Superpriority Administrative Expense Claims, (C) Modifying The Automatic Stay, (D) Scheduling A Final Hearing, And (E) Granting Related Relief* [ECF No. 557] (the “**Scope Motion**”)² dated January 31, 2018.

2. The Scope Motion filed by the Oversight Board seeks the entry of an order limiting the scope of issues to be raised by creditors of PREPA and addressed by the Court at the interim hearing scheduled for February 7, 2018 (the “**Interim Hearing**”) on the *Urgent Joint Motion Of The Financial Oversight And Management Board For Puerto Rico And The Puerto Rico Fiscal Agency And Financial Advisory Authority For Entry Of Interim And Final Orders (A) Authorizing Postpetition Secured Financing, (B) Granting Priming Liens And Providing Superpriority Administrative Expense Claims, (C) Modifying The Automatic Stay, (D) Scheduling A Final Hearing, And (E) Granting Related Relief* [ECF No. 549] (the “**Financing Motion**”).

1. Arc is an administrative expense creditor of PREPA as a result of having furnished, after the bankruptcy filing, subcontract work, labor, materials and services for the

² Capitalized terms not otherwise defined herein shall have the same meaning as in the Scope Motion.

benefit of PREPA and the people of Puerto Rico in October and November 2017. Arc dispatched its emergency storm restoration resources to Puerto Rico, including crews and tools to the island, immediately following the destruction caused by Hurricane Maria. Specifically, Arc's primary task in the restoration effort, was the repair of critical transmission lines to the power grid. Notwithstanding Arc's rapid and professional response, Arc remains unpaid in an amount close to \$19 million for labor, materials and services furnished by Arc and costs incurred by Arc for the benefit of PREPA and the people of Puerto Rico in October and November 2017, after PREPA's bankruptcy filing.

3. Arc has filed an objection to the Financing Motion (the "**Financing Motion Objection**") contemporaneous with the Scope Objection. Arc hereby incorporates by reference the arguments made in its Financing Motion Objection. Arc respectfully submits that the Scope Motion is inappropriate and should be denied in its entirety at or before the Interim Hearing for the following reasons:

4. First, by limiting the scope of the Interim Hearing as proposed by the Oversight Board, creditors of PREPA and the Court will be denied the opportunity to test whether the proposed \$1.3 billion Facility complies with 11 U.S.C. 364(c), is fair, reasonable, and in the best interests of creditors, as required by law. In re Ames Dep't Stores, Inc., 115 B.R. 34, 37–40 (Bankr.S.D.N.Y.1990)(“Acknowledging that Congress, in Chapter 11, delicately balanced the hope of debtors to reorganize and the expectations of creditors for payment, the courts have focused their attention on proposed terms that would tilt the conduct of the bankruptcy case; prejudice, at an early stage, the powers and rights that the Bankruptcy Code confers for the benefit of all creditors; **or leverage the Chapter 11 process by preventing motions by parties-in-interest from being decided on their merits.**”). See Ames Dep't Stores supra. (Emphasis

supplied)(citing In re Tenny Village Co., 104 B.R. 562, 567–70 (Bankr.D.N.H.1989); In re St. Mary Hospital, 86 B.R. 393, 551, 17 Bankr.Ct.Dec. 685 (Bankr.E.D.Pa.1988).

5. Second, in its current form, the proposed Interim Order granting the Financing Motion is fundamentally unfair, unreasonable, and fails to meet the legal standard for Court approval because it favors one specific class of administrative expense creditors over others. Specifically, the Interim Order provides for payment of allowed fees, costs and expenses of professionals for the Debtor, Oversight Committee and Creditors' Committee (i.e., the “Carve-Out”), with no cap for professional fees already incurred and/or those to be incurred prospectively. By contrast, the Interim Order does not provide for payment of allowed fees, costs, and expenses incurred by post-petition subcontractors (such as Arc) for post-petition labor, materials and services already furnished for the benefit of PREPA and for the people of Puerto Rico. If the Court grants the Scope Motion, then Arc and similarly situated post-petition subcontractors will be denied a fair opportunity to be heard.

6. Last, the Scope Motion, if granted, would limit the transparency required of this Title III proceeding. It would enable the Oversight Board to obtain approval of the Financing Motion without due process – a meaningful opportunity to be heard – afforded to all creditors and stakeholders of PREPA's estate.

7. For each of the reasons set forth above, as well as for each of the reasons stated in Arc's objection to the Financing Motion, Arc respectfully requests that the Court deny the Scope Motion in its entirety and grant such other or further relief as may be appropriate.

Dated: February 1, 2018

Respectfully submitted,

CHIESA SHAHINIAN & GIANOMASI PC

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